

ARTICLE 89-02

DRAINAGE OF WATER

Chapter

89-02-01	Drainage of Ponds, Sloughs, Lakes, or Sheetwater, or Any Series Thereof, and of Meandered Lakes
89-02-02	Drainage of Wetlands [Repealed]
89-02-03	Wetlands Bank [Repealed]
89-02-04	Drainage Complaint Appeals
89-02-05	Licenses for Emergency Drainage [Repealed]
89-02-05.1	Licenses for Emergency Drainage

CHAPTER 89-02-01

DRAINAGE OF PONDS, SLOUGHS, LAKES, OR SHEETWATER, OR ANY SERIES THEREOF, AND OF MEANDERED LAKES

Section

89-02-01-01	Intent
89-02-01-02	Definitions
89-02-01-03	Permit Required
89-02-01-04	Permits for Assessment Drains [Repealed]
89-02-01-05	Exceptions to Permit Required
89-02-01-06	Determination of Watershed Area
89-02-01-07	Filing Application
89-02-01-08	Referral of Applications to Appropriate District
89-02-01-09	Criteria for Determining Whether Drainage Is of Statewide or Interdistrict Significance
89-02-01-09.1	Board Procedure for Processing Applications to Drain
89-02-01-09.2	Evaluation of Applications - Factors Considered
89-02-01-09.3	Time for Determination by Board
89-02-01-09.4	Evaluation of Applications by the State Engineer of Statewide or Interdistrict Significance - Information to Be Used
89-02-01-09.5	Procedure, Availability, and Contents of Notice of State Engineer's Decision to Grant or Deny Application of Statewide or Interdistrict Significance
89-02-01-09.6	Request for State Engineer's Hearing
89-02-01-09.7	Notice of State Engineer's Hearing
89-02-01-09.8	Evidence at the State Engineer's Hearing
89-02-01-09.9	Time for Determination by the State Engineer - Copies of Decision
89-02-01-09.10	Consideration of Evidence Not Contained in the State Engineer's Record
89-02-01-09.11	Conditions to Permits - Extending Time to Complete Project
89-02-01-09.12	Time Within Which to Complete Construction of Drain
89-02-01-10	District Hearing on Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-11	Emergency Drainage [Repealed]
89-02-01-12	Notice of District Hearing [Repealed]

89-02-01-13	Content of Notice of Hearing [Repealed]
89-02-01-14	Affidavit of Mailing and Affidavit of Notice [Repealed]
89-02-01-15	Time for Determination by Board of Managers [Repealed]
89-02-01-16	Consideration by the State Engineer and Districts [Repealed]
89-02-01-17	Approval of Drainage Permit Applications by District [Repealed]
89-02-01-18	Denial of Application by the District [Repealed]
89-02-01-18.1	Notice by State Engineer of Public Hearing on Application of Statewide or Interdistrict Significance [Repealed]
89-02-01-18.2	Evidence Presented at the State Engineer's Public Hearing [Repealed]
89-02-01-19	Consideration by State Engineer of Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-20	Criteria to Determine Whether Drainage Will Adversely Affect Lands of Lower Landowners [Repealed]
89-02-01-20.1	Time for Determination by the State Engineer [Repealed]
89-02-01-20.2	Consideration of Evidence Not Contained in the Record [Repealed]
89-02-01-21	Conditions to Permits [Repealed]
89-02-01-22	Requirements for a Valid Permit to Drain [Repealed]
89-02-01-23	Procedure Upon Complaint of Violation [Repealed]
89-02-01-24	Enforcement Action Without Receipt of Complaint [Repealed]
89-02-01-25	Criminal Complaint [Repealed]
89-02-01-26	Ditches or Drains Existing for Ten Years or More [Repealed]
89-02-01-27	Notice of Drainage Application Denials to Commissioner of Agriculture [Repealed]
89-02-01-28	Landowner Assessment Appeal to State Engineer

89-02-01-01. Intent. This chapter establishes rules for processing applications for permits to drain certain ponds, sloughs, lakes, or sheetwater, or any series thereof, and meandered lakes, as required by North Dakota Century Code sections 61-15-08 and 61-32-03.

History: Amended effective December 1, 1979; August 1, 1994; February 1, 1997; June 1, 1998.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-02. Definitions. Unless the context otherwise requires, the following definitions apply:

1. "Assessment drain" means any drain constructed pursuant to North Dakota Century Code chapter 61-16.1 or 61-21.
2. "Board" means the board of managers of a water resource district.
3. "District" means water resource district.

4. "Drain" includes any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and other appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area.
5. "Lake" means a well-defined basin which characteristically holds water throughout the year. Lakes go dry only after successive years of below normal runoff and precipitation.
6. "Lateral drain" for the purpose of regulating the drainage of water means a drain constructed after the establishment and construction of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain.
7. "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.
8. "Meandered lake" means any pond, slough, or lake which has had its boundaries established by metes and bounds in the survey of public lands by the government of the United States.
9. "Party of record" means each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
10. "Person" means a person, firm, partnership, association, corporation, or any other type of private legal relationship, and any governmental organization, which includes any agency of the United States, a state agency, and any political subdivision of the state.
11. "Pond" means a well-defined land depression or basin that holds water in normal years throughout the summer. Ponds generally go dry only in years of below normal runoff and precipitation.
12. "Series of ponds, sloughs, lakes, or sheetwater" means two or more ponds, sloughs, lakes, or sheetwater that are hydrologically linked naturally or artificially.
13. "Sheetwater" is defined by North Dakota Century Code section 61-32-03, which provides that sheetwater means shallow water that floods land not normally subject to standing water.
14. "Slough" includes two types:
 - a. Seasonal slough: a depression which holds water in normal years from spring runoff until mid-July. In years of normal runoff and precipitation, a seasonal slough is usually not tilled but can be

used for hayland or pasture. In low runoff, dry years, these areas generally are tilled for crop production, but commonly reflood with frequent or heavy summer or fall rains.

- b. Temporary slough: a shallow depressional area that holds water or is waterlogged from spring runoff until early June. In years of normal runoff and precipitation, a temporary slough is usually tilled for crop production. In years of high runoff or heavy spring rain, a temporary slough may not dry out until mid-July and generally would not be tilled but may be used for hayland or pasture. A temporary slough frequently refloods during heavy summer and fall rains.
- 15. "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code section 61-03-01, or the state engineer's designee.
- 16. "Supplemental public hearing" means a hearing held to review evidence not contained in the record of the state engineer's public hearing.
- 17. "Watercourse" is defined by North Dakota Century Code section 61-01-06. That section provides: "A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character." Watercourse, for the purposes of this chapter, also means an outlet channel utilized to carry drained water from the outlet of the drain to a watercourse, as defined by section 61-01-06.
- 18. "Watershed" means the area which drains into a pond, slough, lake, or sheetwater, or any series thereof.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-03. Permit required.

- 1. A permit is required before any person may construct a drain for the purpose of draining waters from a pond, slough, lake, or sheetwater, or any series thereof, having a watershed of eighty acres [32.37 hectares] or more.

2. A permit is required before any person may drain by pumping a pond, slough, lake, or sheetwater, or any series thereof, having a watershed of eighty acres [32.37 hectares] or more.
3. A permit is required before any person may drain, cause to be drained, or attempt to drain any meandered lake.
4. A permit is required for an assessment drain constructed pursuant to North Dakota Century Code chapter 61-16.1 or 61-21.
5. A permit is required for the construction of any lateral drain.
6. A permit is required before any person may modify the drainage authorized in the original permit. Modification of drainage includes deepening and widening of a drain, or the extension of any drain.
7. A permit is required before any person may fill a pond, slough, lake, or sheetwater which has a watershed of eighty acres [32.37 hectares] or more, for the purpose of causing the pond, slough, lake, or sheetwater to be drained by elimination of all or a portion of the existing storage.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-04. Permits for assessment drains. Repealed effective February 1, 1997.

89-02-01-05. Exceptions to permit required.

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.
2. The provisions of section 89-02-01-03, except subsection 3, do not apply to any drain constructed under the direct and comprehensive supervision of the federal or state agencies specified in this section. The agencies deemed capable of providing supervision and analyzing downstream impacts are:
 - a. The state water commission;
 - b. The army corps of engineers;
 - c. The natural resources and conservation service, for projects constructed pursuant to the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001];

- d. The bureau of reclamation, for projects that are part of the originally authorized Garrison diversion unit authorized in 1965;
- e. The state department of transportation, for federal aid projects; and
- f. The public service commission for surface mining projects.

However, these agencies shall notify the state engineer of any proposed drainage projects under their direct supervision during the planning stages.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; April 1, 2004.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-06. Determination of watershed area. The determination of the watershed area must be made using accurate or reliable maps or surveys. Published seven and one-half minute topographic maps or a survey conducted under the supervision of a registered land surveyor are preferred. This information may be supplemented by aerial photographs of the watershed or by an onsite investigation if requested by the applicant or the local water resource board, or if the state engineer determines it is necessary.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-07. Filing application. Any person desiring a drainage permit shall file an application with the state engineer on a form provided by the state engineer. The applicant, if requested by the state engineer or the board, shall provide an engineering analysis showing the downstream impacts of the proposed drainage. The analysis, at the discretion of the state engineer or the board, may include a determination of the capacity of the drain and the receiving watercourse and a comparison of volume and timing of predrainage and postdrainage flows. If the application is incomplete, or if the information contained therein is insufficient to enable the state engineer or the appropriate district to make an informed decision on the application, the application must be returned to the applicant for correction.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-08. Referral of applications to appropriate district. Upon receipt of a properly completed application, the state engineer shall determine whether the application involves drainage of statewide or interdistrict significance using the factors set out in section 89-02-01-09. The state engineer shall attach to the application any comments, recommendations, and engineering data that may

assist the appropriate district in making a determination on the application. The application must then be referred to the appropriate district within which is found a majority of the watershed or drainage area of the pond, slough, lake, or sheetwater, or any series thereof.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-09. Criteria for determining whether drainage is of statewide or interdistrict significance. In determining whether the proposed drainage is of statewide or interdistrict significance, the state engineer shall be guided by the following criteria:

1. Drainage which would affect property owned by the state or its political subdivisions.
2. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.
3. Drainage or partial drainage of a meandered lake.
4. Drainage which would have a substantial effect on another district.
5. Drainage which would convert previously noncontributing areas (based on twenty-five year event - four percent chance) into permanently contributing areas.
6. For good cause, the state engineer may classify any proposed drainage as having statewide or interdistrict significance, or the state engineer may determine that certain proposed drainage is not of statewide or interdistrict significance.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08

89-02-01-09.1. Board procedure for processing applications to drain.

1. The board shall use the procedure in this subsection when it processes a drainage permit application that the state engineer has determined is of statewide or interdistrict significance:
 - a. Upon receipt of an application to drain from the state engineer, the board shall set the date, time, and place for a meeting at which it will receive information concerning the merits of, as well as any testimony or information pertinent to the application. At the

applicant's expense, the board shall also give notice by mail not less than twenty days from the date set for consideration of the drainage application to:

- (1) The applicant.
 - (2) All record title owners of real estate and holders of a contract for deed whose property would be crossed by the proposed drain.
 - (3) All downstream riparian landowners on the watercourse into which water will be drained who are adversely impacted as determined by the board.
 - (4) Any board that would be substantially affected by the water to be drained.
 - (5) The state game and fish department.
 - (6) The state department of health.
 - (7) The state highway commissioner, county commissioners, and board of township supervisors if the proposed drainage will affect or cross the right of way of any public highway or road within their jurisdiction.
 - (8) The state engineer.
 - (9) Any person who has made a written request for notification of that project and has advanced the cost of providing that notification. Such advance may not exceed ten dollars.
- b. Notice must also be published in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. Final notice must be published not more than fifteen days nor less than five days from the date set for the meeting.
- c. The notice must give the essential facts of the proposed drain including name and address of applicant; legal description of the area to be drained; purpose of the drainage; watercourse into which the water will be drained; legal description of the confluence of the drain and the watercourse into which the water will be drained; the time, date, and place of the board's consideration of the application; and the location and date of availability of information regarding the project.
- d. At least fourteen days prior to the date set by the board for its meeting to receive information on the application, the applicant

shall submit to the board all documentary information the applicant intends to present at the board's meeting. The board shall immediately place such information in the board's office if the office is open for public access at least twenty hours each week, or if the board's office is not open to the public at least twenty hours each week, in custody of the auditor of the county in which the majority of the watershed of the drain is to be built. The information must be available for public review. The board shall notify the applicant of this requirement upon its receipt of an application to drain. If the information is placed in the auditor's office, the auditor shall return the information to the board one working day prior to the board's meeting.

- e. The board shall allow submission of all relevant oral or written evidence.
- f. In evaluating applications, the board shall consider the factors in section 89-02-01-09.2.
- 9. The meeting at which the board receives information concerning the application must be recorded either stenographically or electronically. If the board approves the permit application, the record and all documentary information received by the board must be transferred to the state engineer. Upon request of the state engineer, the board shall provide a transcript of the meeting. The cost of providing a transcript must be borne by the applicant.
- h. At the conclusion of the meeting at which the board receives information about the proposed drain, the board shall announce that:
 - (1) The board's denial of a permit constitutes final denial of the permit. Appeals of a denial must be taken to the district court within thirty days.
 - (2) A board-approved application will be forwarded to the state engineer.
 - (3) Those who wish to be notified of the board's decision shall so notify the board and shall provide their names and addresses in writing to the board at the end of the meeting.
 - (4) The board shall send notice of the board's decision along with a copy of the board's determination and rationale to all parties of record, to anyone who has requested in writing to be notified, and to the state engineer.
- i. If the board denies the application, it shall return the application to the applicant along with a copy of the board's determination and

rationale. A copy of the board's denial and rationale must also be sent to all parties of record, to anyone who has requested in writing to be notified, and to the state engineer.

- j. If the board approves the application, the board's approval must be noted on the application and a copy of the determination sent to the applicant. The board shall send notice of the board's decision along with a copy of the board's determination and rationale to all parties of record and to anyone who has requested in writing to be notified. The application, a copy of the determination, and all information reviewed by the board in considering the application must be forwarded to the state engineer for review within twenty days of the determination. The board's decision approving the application must contain a determination of the location and size, in surface acres, of ponds, sloughs, and lakes to be drained by the proposed drain. A seven and one-half minute topographic map indicating the location and size of the ponds, sloughs, and lakes approved for drainage must be attached to the determination.
 - k. The board's notice to an applicant must state that the board's approval of the application is not a permit to drain until the state engineer has also approved the application.
2. The board shall use the following procedure when it processes a drainage permit application that the state engineer has determined is not of statewide or interdistrict significance:
- a. The board shall review the permit application and any supporting documentation and determine whether protection of public and private interests would be better served by a specific public meeting to consider the project. If it is determined a specific public meeting is necessary to protect public and private interests, the board shall process the permit application in accordance with procedures established by the board.
 - b. If the board determines a specific public meeting is unnecessary, the board shall consider the project pursuant to the criteria set forth in section 89-02-01-09.2 and shall deny or grant the application with or without modifications or conditions based upon those criteria. Written notice of the board's decision must be provided to all parties of record, to anyone requesting in writing notice of the decision, and to the state engineer.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.2. Evaluation of applications - Factors considered. The state engineer, for applications of statewide or interdistrict significance, and the board, for all applications to drain, shall consider the following factors:

1. The volume of water proposed to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained.
2. Adverse effects that may occur to the lands of lower proprietors. This factor is limited to the project's hydrologic effects such as erosion, duration of floods, impact of sustained flows, and impact on the operation of downstream water control devices.
3. The engineering design and other physical aspects of the drain.
4. The project's impact on flooding problems in the project watershed.
5. The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values.
6. The project's impact on agricultural lands.
7. Whether easements are required.
8. Other factors unique to the project.

History: Effective February 1, 1997; amended effective April 1, 2000.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-01-26, 61-16.1-10(3), 61-32-03

89-02-01-09.3. Time for determination by board. Within sixty days after receipt from the state engineer of an application to drain, the board shall make a determination on the application. This time limit may be extended only with the written consent of the state engineer. A request for an extension of time under this section must be in writing to the state engineer and must set forth the reason for requesting the time extension.

In applications involving assessment drains, the sixty-day time period does not commence until the date the assessments are finally established by the board and are no longer subject to appeal to a court of law or the state engineer.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.4. Evaluation of applications by the state engineer of statewide or interdistrict significance - Information to be used. In the state engineer's evaluation of an application of statewide or interdistrict significance, the state engineer shall use all relevant documentary information submitted

and oral testimony given for the board's consideration at its meeting. The state engineer may also use any information in the files and records retained by the state engineer's office or engineering information developed or obtained through investigation of the project area by the state engineer's staff. The information used must be relevant and is part of the record.

The state engineer may also request information and comment from independent sources. However, the state engineer is not required to delay the state engineer's decision on an application for more than thirty days from the date of request while waiting for comment from these sources.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-06, 61-32-03

89-02-01-09.5. Procedure, availability, and contents of notice of state engineer's decision to grant or deny application of statewide or interdistrict significance.

1. If the state engineer determines an application of statewide or interdistrict significance should be denied, the state engineer shall provide a copy of the determination to the parties of record. If the state engineer determines an application should be granted, with or without conditions, the state engineer shall provide a copy of the determination to all parties of record. Other members of the public may view the record at the office of the state engineer, 900 east boulevard, Bismarck, during normal business hours.
2. One copy of the determination to grant or deny a permit may be provided to persons not provided copies pursuant to subsection 1 upon written request. Additional copies will be provided upon payment for necessary copying, handling, and postage.
3. Copies of the notice of the state engineer's determination must be provided to persons who made a written request for notice of that project not more than two months, or later than one day, prior to the date of the state engineer's decision.
4. The notice of decision must include the name of the drain; the applicant's name; whether the application was granted or denied and the date of the decision; the availability of the full text of the decision; and the fact that within thirty days of the date of the state engineer's decision a hearing may be requested on the project. The notice must also state that a valid request for a hearing must be in writing; must specifically state facts from which the person requesting the hearing is factually aggrieved by the state engineer's decision; and must state

what material facts, or conclusions, are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-03

89-02-01-09.6. Request for state engineer's hearing. All requests for a formal hearing on a project must be made in writing to the state engineer. To be valid, a request must be made within thirty days of the date of service of the state engineer's decision. The request must be in writing and must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the state engineer's decision; and must state which material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.7. Notice of state engineer's hearing. If the state engineer determines that a request for a hearing on an application of statewide or interdistrict significance is valid and well-founded, the state engineer shall set a date for a hearing and publish notice in the official newspaper of the county within which a majority of the drainage basin is located. Publication must be once a week for two consecutive weeks. One of the publications must be published no less than twenty days before the hearing date. The person requesting the hearing shall give notice by certified mail to the state department of health, the state game and fish department, the state department of transportation, and all parties of record to the board's hearing at least twenty-one days before the date of the hearing. If such notice is not provided, the hearing may not be held. The notice must give essential information about the proposed drainage application including the date, time, and location of the hearing. All hearings will be held in Bismarck.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-05

89-02-01-09.8. Evidence at the state engineer's hearing. Evidence at the state engineer's hearing may be confined to the matters put in issue by any valid request of hearing described in section 89-02-01-09.7.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-06, 61-32-03

89-02-01-09.9. Time for determination by the state engineer - Copies of decision. Unless the state engineer determines the matters put in issue by the request for a hearing raise complex or unique issues, the state engineer shall render a decision within thirty days of the close of the state engineer's hearing. A

copy of the decision must be given to all parties of record at the state engineer's hearing either personally, by certified mail, or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom a copy of the decision was served.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 28-32-13, 61-03-13

Law Implemented: NDCC 28-32-13

89-02-01-09.10. Consideration of evidence not contained in the state engineer's record. The record of the state engineer's hearing must be closed at the conclusion of the state engineer's formal hearing. It is in the state engineer's discretion to receive testimony and evidence that is not contained in the record. However, the state engineer, before considering any evidence not contained in the record, shall transmit the evidence to the parties of record for their examination and comment. The costs of reproducing and transmitting the evidence must be paid in advance by the party offering the evidence. Written comment or a request for a supplemental hearing must be submitted to the state engineer within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the state engineer to determine if a supplemental hearing is warranted. If a supplemental hearing is warranted, ten days' notice by personal service or certified mail must be afforded the parties of record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings must be held in Bismarck.

History: Effective February 1, 1997.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 28-32-07

89-02-01-09.11. Conditions to permits - Extending time to complete project. Unless otherwise specifically stated:

1. All permits must include the following conditions:
 - a. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
 - b. That construction must be completed within two years from the date of final approval.
2. All permits of statewide or interdistrict significance must include the following conditions:
 - a. All highly erodible drainage channels must be seeded to a sod-forming grass.
 - b. The vegetative cover must be adequately maintained for the life of the project or control structures must be installed, or a combination of these two criteria.

3. A permit may be extended beyond two years for good cause shown. If the permit was not of statewide or interdistrict significance when it was originally approved, a request for an extension must be approved or disapproved by the board. If the permit was of statewide or interdistrict significance when it was originally approved, a request for an extension must be approved or disapproved by the state engineer. No extension may exceed two years.

The state engineer or the board may attach other conditions to the permit if deemed necessary.

History: Effective February 1, 1997; amended effective April 1, 2000.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-01-09.12. Time within which to complete construction of drain.

The recipient of a permit to drain under this chapter shall complete construction within two years of the date the decision granting the permit is final. The two-year period does not begin until any appeal of the state engineer's decision or board's decision is completed, nor does it run during the course of any other legal action brought to challenge the state engineer's decision or board's decision or halt or modify the project.

If the two-year period runs before construction is completed, the permit recipient may make a written request for a one-year extension which must be approved by the board. All requests for extensions must be made at least sixty days before the end of the two-year period and must specifically state why construction has not been completed. Upon expiration of any extension, the permit recipient may request a further extension. If the request is for an extension relating to a permit that the state engineer has determined to be of statewide or interdistrict significance, the extension must be approved by both the state engineer and the board.

In the event the two-year period passes without the completion of construction, an extension of the period as provided in this section, or legal process staying construction, the permit is void.

History: Effective February 1, 1997; amended effective April 1, 2004.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-03-13, 61-32-03

89-02-01-10. District hearing on applications of statewide or interdistrict significance. Repealed effective February 1, 1997.

89-02-01-11. Emergency drainage. Repealed effective February 1, 1997.

89-02-01-12. Notice of district hearing. Repealed effective February 1, 1997.

89-02-01-13. Content of notice of hearing. Repealed effective February 1, 1997.

89-02-01-14. Affidavit of mailing and affidavit of notice. Repealed effective December 1, 1979.

89-02-01-15. Time for determination by board of managers. Repealed effective February 1, 1997.

89-02-01-16. Consideration by the state engineer and districts. Repealed effective February 1, 1997.

89-02-01-17. Approval of drainage permit applications by district. Repealed effective February 1, 1997.

89-02-01-18. Denial of application by the district. Repealed effective February 1, 1997.

89-02-01-18.1. Notice by state engineer of public hearing on application of statewide or interdistrict significance. Repealed effective February 1, 1997.

89-02-01-18.2. Evidence presented at the state engineer's public hearing. Repealed effective February 1, 1997.

89-02-01-19. Consideration by state engineer of applications of statewide or interdistrict significance. Repealed effective February 1, 1997.

89-02-01-20. Criteria to determine whether drainage will adversely affect lands of lower landowners. Repealed effective February 1, 1997.

89-02-01-20.1. Time for determination by the state engineer. Repealed effective February 1, 1997.

89-02-01-20.2. Consideration of evidence not contained in the record. Repealed effective February 1, 1997.

89-02-01-21. Conditions to permits. Repealed effective February 1, 1997.

89-02-01-22. Requirements for a valid permit to drain. Repealed effective December 1, 1979.

89-02-01-23. Procedure upon complaint of violation. Repealed effective February 1, 1997.

89-02-01-24. Enforcement action without receipt of complaint. Repealed effective October 1, 1982.

89-02-01-25. Criminal complaint. Repealed effective October 1, 1982.

89-02-01-26. Ditches or drains existing for ten years or more. Repealed effective December 1, 1979.

89-02-01-27. Notice of drainage application denials to commissioner of agriculture. Repealed effective August 1, 1994.

89-02-01-28. Landowner assessment appeal to state engineer. A landowner's appeal to the state engineer, claiming that the landowner will receive no benefit from the construction of a new drain, must be made within ten days after the hearing on assessments. The appeal must be in writing and must specifically state the facts upon which the claim is based.

History: Effective April 1, 2000.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-21-22